

§ 54.4980G-0

June 7, 2001, *see* § 1.411(d)-6 of this chapter, as it appeared in the April 1, 2001 edition of 26 CFR part 1.

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§ 54.4980G-2 Employer contribution defined.

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§ 54.4980G-3 Employee for comparability testing.

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bargaining agreement comparable participating employees?

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Q-8: If an employee and his or her spouse are eligible individuals who work for the same employer and one employee-spouse has family coverage for both employees under the employer's HDHP, must the employer make comparable contributions to the HSAs of both employees?

Q-9: Does an employer that makes HSA contributions only for one class of non-collectively bargained employees who are eligible individuals, but not for another class of non-collectively bargained employees who are eligible individuals (for example, management v. non-management) satisfy the requirement that the employer make comparable contributions?

Q-10: If an employer contributes to the HSAs of former employees who are eligible individuals, do the comparability rules apply to these contributions?

Q-11: Is an employer permitted to make comparable contributions only to the HSAs of comparable participating former employees who have coverage under the employer's HDHP?

Q-12: If an employer contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP, must the employer make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in section 9832(d)(1))?

Q-13: How do the comparability rules apply if some employees have HSAs and other employees have Archer MSAs?

§ 54.4980G-4 Calculating comparable contributions.

Q-1: What are comparable contributions?

Q-2: How does an employer comply with the comparability rules when some non-collectively bargained employees who are eligible individuals do not work for the employer during the entire calendar year?

Q-3: How do the comparability rules apply to employer contributions to employees' HSAs if some non-collectively bargained employees work full-time during the entire calendar year, and other non-collectively bargained employees work full-time for less than the entire calendar year?

Q-4: May an employer make contributions for the entire year to the HSAs of its employees who are eligible individuals at the beginning of the calendar year (*i.e.*, on a pre-funded basis) instead of contributing on a pay-as-you-go or on a look-back basis?

Q-5: Must an employer use the same contribution method as described in Q & A-2 and Q & A-4 of this section for all employees for any month during the calendar year?

Q-6: How does an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs?

Q-7: If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed?

Q-8: Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions?

Q-9: If an employer conditions contributions by the employer to an employee's HSA on an employee's participation in health assessments, disease management programs or wellness programs and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules?

Q-10: If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules?

Q-11: If an employer makes additional contributions to the HSAs of all comparable participating employees who are eligible to make the additional contributions (HSA catch-up contributions) under section 223(b)(3), do the contributions satisfy the comparability rules?

Q-12: If an employer's contributions to an employee's HSA result in non-comparable contributions, may the employer recoup the excess amount from the employee's HSA?

Q-13: What constitutes a reasonable interest rate for purposes of making comparable contributions?

Q-14: How does an employer comply with the comparability rules if an employee has not established an HSA by December 31st?

Q-15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

Q-16: What is the effective date for the rules in Q & A-14 and Q & A-15 of this section?

§ 54.4980G-5 HSA comparability rules and cafeteria plans and waiver of excise tax.

Q-1: If an employer makes contributions through a section 125 cafeteria plan to the HSA of each employee who is an eligible individual, are the contributions subject to the comparability rules?

Q-2: If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the amount of the employee's HSA contribution or a percentage of the amount of the employee's HSA contribution (i.e., matching contributions), are the contributions subject to the section 4980G comparability rules?

Q-3: If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs or wellness programs receive an employer contribution to an HSA and the employees have the right to elect to make pre-tax salary reduction contributions to their HSAs, are the contributions subject to the comparability rules?

Q-4: May all or part of the excise tax imposed under section 4980G be waived?

[T.D. 9277, 71 FR 43058, July 31, 2006; 71 FR 53967, Sept. 13, 2006, as amended by T.D. 9393, 73 FR 20795, Apr. 17, 2008]

§ 54.4980G-1 Failure of employer to make comparable health savings account contributions.

Q-1: What are the comparability rules that apply to employer contributions to Health Savings Accounts (HSAs)?

A-1: If an employer makes contributions to any employee's HSA, the employer must make comparable contributions to the HSAs of all comparable participating employees. See Q & A-1 in § 54.4980G-4 for the definition of comparable contributions. Comparable participating employees are eligible individuals (as defined in section 223(c)(1)) who are in the same category of employees and who have the same category of high deductible health plan (HDHP) coverage. See sections 4980G(b) and 4980E(d)(3). See section 223(c)(2) and (g) for the definition of an HDHP. See also Q & A-5 in § 54.4980G-3 for the categories of employees and Q & A-2 of this section for the categories of HDHP coverage. But see Q & A-6 in § 54.4980G-3 for treatment of collectively bargained employees and Q & A-1 in § 54.4980G-6 for the rules allowing larger comparable contributions to non-highly compensated employees.